

MARCUS RUDNICK AND MARCIA RUDNICK

IBLA 72-29

Decided October 26, 1972

Appeal from decision of Riverside Land Office, Bureau of Land Management, rejecting color of title application (R-2825).

Affirmed.

Color or Claim of Title: Generally--Color or Claim of Title: Applications--Color or Claim of Title:
Description of Land

A color of title application must be rejected where there is not shown an instrument, which, on its face, purports to convey the land in issue.

A color of title application based entirely upon a mistaken belief that the tract is embraced within one's own holdings is not acceptable.

APPEARANCES: Marcus Rudnick, pro se, and for Marcia Rudnick.

OPINION BY MR. FISHMAN

Marcus Rudnick and Marcia Rudnick have appealed from a decision of the Riverside Land Office, dated June 21, 1971, rejecting their color of title application, embracing the W 1/2 SW 1/4 sec. 17, T. 27 S., R. 35 E., M.D.M., California. The application was rejected because: (1) the record did not reflect a written instrument purporting to convey the land in issue; (2) a color of title claim cannot include land without such an instrument; and (3) the appellants have failed to show that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation. 43 U.S.C. § 1068 (1970).

By decision of March 31, 1971, the application had been rejected as to other lands, since they had been previously patented. By that decision, the appellants were called upon to furnish copies of instruments of title as to the W 1/2 SW 1/4 sec. 17. The appellants filed title documents, none of which described the land in issue.

Appellants assert it is error to "hold that a color of title cannot run to land outside the area described in the deed on which the claim or color of title is based."

It is well established that a claim or color of title must be established, if at all, by a deed or other writing which purports to pass title and which appears to be title to the land, but which is not good title. Peterson v. Weber County, 99 Utah 281, 103 P.2d 652, 655 (1939); see Karvonen v. Dyer, 261 F.2d 671, 674 (9th Cir. 1958), and Henry D. Warbasse, Eugenia W. Warbasse, A-30383 (August 19, 1965).

The appellants also assert that the original entryman of the lands in the area "believed that he had filed on taking the creek and the area where his house was built." In essence, appellant is suggesting that the original claimant, J. Nieto, intended to encompass the land in issue within his claim. An adverse possession under the Color of Title Act, based entirely on a mistaken belief that the tract is embraced within one's own holdings, is inadequate under the law, since it lacks the basic element of a claim or title derived from some source other than the United States. John Johnson, A-25695 (December 30, 1949). See Christopher A. Merlau, A-26204 (December 18, 1951).

Appellant challenges the holding in the decision below that "* * * a basic requirement of a color of title claim is * * * a deed or other written instrument purporting to convey title to the land * * *." He states that "* * * that was the land that was occupied and had been over 50 years * * * with the sincere belief of everyone that this land in question was the land filed on." Such a deed or other writing purporting to convey title and describing the land sought under the application is a sine qua non. Minnie E. Wharton, et al., 79 I.D. 6, 9 (1972). In essence, a color of title claimant must establish, inter alia, that the land in issue was conveyed by an instrument which on its face purported to convey the land in issue. S. V. Wantrup, Wallace Hardin, 5 IBLA 286 (1972); cf. Harold C. Rosenbaum, 79 I.D. 38 (1972). The appellant has not adduced such a document.

In view of the foregoing, it is unnecessary to consider the third basis for rejection embodied in the decision below.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member

